IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11086 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAO METALS PVT LTD

Versus

STATE OF GUAJRAT

Appearance:

1. Special Civil Application No. 11086 of 2002

MR BHARAT T RAO for Petitioner No. 1

Ms MANISHA LAVKUMAR, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 03/12/2002

ORAL JUDGEMENT

Rule. Ms Manisha Lavkumar, learned AGP waives service of Rule for the respondents.

2. The petitioner's grievance is against the non-release of the Earned Money Deposit of Rs. 10 lacs deposited by the petitioner in response to the public

notice issued by the Liquidator appointed by the State of Gujarat under the provisions of the Gujarat Co-operative Societies Act for inviting offers from the interested parties for the disposal of the assets of Shree Sardar Growers Co-operative Union Ltd., Idar, Sabarkantha which was published in Sandesh dated 9.5.2002.

3. The petitioner's case is that since the Sale Committee appointed for the purpose has already taken the decision to accept the highest offer of Jai Hind Projects at Rs.4.42 Crores, the petitioner is entitled to have its EMD refunded as the petitioner's offer was lower at Rs.4.41 Crores.

4. Ms Manisha Lavkumar, learned AGP for the respondents states that earlier when the matter was before the Debt Recovery Tribunal, the following order was passed on 2.7.2002 :-

> "The Advocate appearing for Respondents seeks time to comply the order passed on 17.6.2002. The Advocate for Respondents submits that other offerers who are not interested in this tender are asking for their EMD. Receiver is directed to refund EMD amount of those parties. Order dt. 17.6.2002 be complied with within two weeks.
> To be listed on 2.8.2002."

It is submitted that it was open to the petitioner at that time to apply for refund, but now there is ad-interim stay granted by the DRT, Mumbai in Appeal No. 385 of 2002 filed by P.N. Trading Company which party has made still higher offer and on 14.10.2002, the Appellate Tribunal had issued notice and granted ad-interim stay of the order passed by the DRT.

5. It appears to the Court that since the petitioner is no longer in the fray now and the dispute in the aforesaid proceedings before the Appellate Tribunal at Mumbai is between P.N. Trading Company which is stated to have offered Rs.4.61 Crores and Jai Hind Projects which had offered Rs.4.42 Crores, the petitioner is entitled to invoke the following portion of Clause 8 of the tender conditions which reads as under :-

> "The EMD of unsuccessful tenderer will be refunded after final decision to accept or reject the tenders. The EMD of the successful tenderer will be adjusted towards the remaining balance of due payment as mentioned hereinbelow para No. 11. However, the EMD of the successful tenderer will

be liable to be forfeited as liquidated damage in the event of any deviation, refusal or delay on tenderers'/purchasers' parts in signing the agreement OR making the entire payment to the SRU within the stipulated period."

Since the petitioner has not been considered to be a successful tenderer even according to the respondents, the dispute between P.N. Trading Company and Jai Hind Projects cannot come in the way of the petitioner getting back the EMD.

6. The petition is, therefore, allowed. The respondents are directed to refund the EMD of Rs.10 lacs to the petitioner within two weeks from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

As regards the petitioner's claim for interest on the amount of EMD to be refunded, the said claim is rejected as the petitioner itself appeared to have been interested in the bid even when the DRT passed the order dated 2.7.2002. However, if the EMD is not refunded to the petitioner within two weeks from the date of receipt of the writ/certified copy of this order, the respondents shall pay the petitioner interest at the rate of 12% p.a. from today till the date of payment.

7. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct Service is permitted.

(M.S. Shah, J.)

sundar/-